

(d) Payment of net entitlement of failed financial institution

The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Effectiveness notwithstanding status as financial institution

This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

(Pub. L. 102-242, title IV, § 403, Dec. 19, 1991, 105 Stat. 2374.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4405 of this title.

§ 4404. Clearing organization netting**(a) General netting rule**

Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.

(b) Limitation of obligation to make payment

The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

(d) Entitlement of failed members

The net entitlement, if any, of any failed member of a clearing organization shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Obligations of failed members

The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

(f) Limitation on claims for entitlement

A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

(g) Effectiveness notwithstanding status as member

This section shall be given effect notwithstanding that a member is a failed member.

(Pub. L. 102-242, title IV, § 404, Dec. 19, 1991, 105 Stat. 2374.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4405 of this title.

§ 4405. Preemption

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of otherwise enforceable netting contracts in accordance with sections 4403 and 4404 of this title.

(Pub. L. 102-242, title IV, § 405, Dec. 19, 1991, 105 Stat. 2375.)

§ 4406. Relationship to other payments systems

This chapter shall have no effect by implication or otherwise on the validity or legal enforceability of a netting arrangement of any payment system which is not subject to this chapter.

(Pub. L. 102-242, title IV, § 406, Dec. 19, 1991, 105 Stat. 2375.)

§ 4407. National emergencies

The provisions of this chapter may not be construed to limit the authority of the President under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(Pub. L. 102-242, title IV, § 407, Dec. 19, 1991, 105 Stat. 2375.)

REFERENCES IN TEXT

The Trading With the Enemy Act, referred to in text, is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in text, is Pub. L. 95-223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

CHAPTER 46—GOVERNMENT SPONSORED ENTERPRISES

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SUBCHAPTER I—SUPERVISION AND REGULATION OF ENTERPRISES**PART A—FINANCIAL SAFETY AND SOUNDNESS REGULATOR**

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1422b, 1426 of this title.

§ 4501. Congressional findings

The Congress finds that—

(1) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (referred to in this section collectively as the “enterprises”), and the Federal Home Loan Banks (referred to in this section as the “Banks”), have important public missions that are reflected in the statutes and charter Acts establishing the Banks and the enterprises;

(2) because the continued ability of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to accomplish their public missions is important to providing housing in the United States and the health of the Nation’s economy, more effective Federal regulation is needed to reduce the risk of failure of the enterprises;

(3) considering the current operating procedures of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks, the enterprises and the Banks currently pose low financial risk of insolvency;

(4) neither the enterprises nor the Banks, nor any securities or obligations issued by the enterprises or the Banks, are backed by the full faith and credit of the United States;

(5) an entity regulating the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should have sufficient autonomy from the enterprises and special interest groups;

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes;

(7) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return; and

(8) the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.] should be amended to emphasize that providing for financial safety and soundness of the Federal Home Loan Banks is the primary mission of the Federal Housing Finance Board.

(Pub. L. 102–550, title XIII, § 1302, Oct. 28, 1992, 106 Stat. 3941.)

REFERENCES IN TEXT

The Federal Home Loan Bank Act, referred to in par. (8), is act July 22, 1932, ch. 522, 47 Stat. 725, as amended, which is classified generally to chapter 11 (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

SHORT TITLE

Section 1301 of title XIII of Pub. L. 102–550 provided that: “This title [enacting this chapter, amending sections 1422a, 1430, 1430b, 1451 to 1456, 1716 to 1719, 1723, 1723a, and 1723c of this title, sections 3132 and 5313 of Title 5, Government Organization and Employees, section 1905 of Title 18, Crimes and Criminal Procedure, and section 3534 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1451, 1452, 1723, and 4562 of this title, and amending provisions set out as a note under section 1451 of this title] may be cited as the ‘Federal Housing Enterprises Financial Safety and Soundness Act of 1992.’”

§ 4502. Definitions

For purposes of this chapter:

(1) Affiliate

Except as provided by the Director, the term “affiliate” means any entity that controls, is controlled by, or is under common control with, an enterprise.

(2) Capital distribution**(A) In general**

The term “capital distribution” means—

(i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of the enterprise;

(ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by the enterprise of such shares; and

(iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

(B) Exception

Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of the enterprise under an employee stock ownership plan that is qualified under section 401 of title 26 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(3) Compensation

The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(4) Core capital

The term “core capital” means, with respect to an enterprise, the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) The par or stated value of outstanding common stock.

(B) The par or stated value of outstanding perpetual, noncumulative preferred stock.

(C) Paid-in capital.

(D) Retained earnings.